1 GIRARDI | KEESE 2 THOMAS V. GIRARDI – BAR NO. 36603 AMY FISCH SOLOMON – BAR NO. 140333 3 AMANDA KENT-BAR NO. 258298 1126 Wilshire Boulevard 4 Los Angeles, California 90017 (213) 977-0211 5 Attorneys For Plaintiffs 6 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT 9 CASE NO. CV 11-00697 PJH DIANE MC IRVIN, an individual, and ALICE) 10 GALE WILSON an individual 1.1 PLAINTIFFS' NOTICE OF OPPOSITION AND OPPOSITION TO DEFENDANTS' Plaintiffs, 12 MOTION TO SEVER PLAINTIFFS AND TRANSFER CLAIMS; MEMORANDUM OF 13 VS. **POINTS & AUTHORITIES IN SUPPORT THEREOF** 14 GYNECARE, INC. a California Corporation; ETHICON, INC. a New Jersey corporation, 15 Date: April 6, 2011 JOHNSON & JOHNSON, a New Jersey Time: 9:00 a.m. 16 corporation, DOE MANUFACTURERS one Place: Courtroom 3 through one hundred. Judge: Hon. Phyllis J. Hamilton 17 18 Defendants. 19 20 21 22 23 24 25 26 27 28

## **TABLE OF CONTENTS** 1 2 MEMORADUM OF POINTS AND AUTHORITIES...... 3 INTRODUCTION AND SUMMARY......1 I. 4 STATEMENT OF FACTS......2 11. 5 III. LEGAL ARGUMENT......3 6 This Action Should Remain Joined Because It Meets the Required Elements of Federal Rules of Procedure Rule 20......3 8 1. Plaintiffs' Claims Arise From the Same Transaction 9 or Series of Transactions......4 10 2. Questions of Law and Fact Common to All Plaintiffs 11 Arise in This Action......5 12 In This Action, Permissive Joinder Comports with 3. 13 14 This Action Should Not Be Transferred Because Venue is В. Proper In the Northern District of California Pursuant to 15 16 Northern District of California is a Proper Venue 1. 17 Pursuant to 28 U.S.C. §1406(a) Because Defendants Are Subject to Personal Jurisdiction There......7 18 19 Transferring this Action to Multiple Jurisdictions 2. Will Not Serve to Further Fairness as Contemplated 20 by 28 U.S.C. §1404(a)......8 21 Should This Court Find that the Northern District of 3. 22 California is an Improper Venue, Plaintiffs Respectfully Request a Transfer to the Southern District of California......10 23 CONCLUSION......11 IV. 24 25 26 27 28

## **TABLE OF AUTHORITIES** 1 2 **Supreme Court of United States Cases** 3 4 5 6 California District Court Cases 7 Fabus Corp v. Asiana Express Corp., 2001 U.S. Dist. LEXIS 2568, 2001 WL 253185 8 at \*1 (N.D. Cal. 2001).......9 The Carolina Casualty Co. v. Data Broad. Corp., 158 F. Supp. 2d 1044, 1048 1.0 11 United States ex re. Anthony v. Burke Eng'g Co., 356 F. Supp. 2e 119, 1122 12 13 Ninth Circuit Cases 14 15 16 17 18 League to Save Lake Tahoe v. Tahoe Regional Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977.......3) 19 Pochiro v. Prudential Ins. Co., 827 F.2d 1246, 1249 (9th Cir. Ariz. 1987)......4 20 <u>Schulman v. California</u>, 237 F.3d 967, 979 (9th Cir. 2011)......4 21 22 Foreign Authority 23 24 Harris v. Steinem, 571 F.2d 119, 123 (2d Cir. 1978)......4 2:5 26 27 28

## Case4:11-cv-00697-PJH Document15 Filed03/16/11 Page4 of 5 **Federal Statutes** 28 <u>U.S.C</u> § 1404(a)..... 28 <u>U.S.C.</u> §1406(a). Federal Rules б California Rules <u>Cal. Code Civ. Proc.</u> § 378(a)(1)..... 1.3 2.5

TO DEFENDANTS AND THEIR ATTORNESY OF RECORD:

**NOTICE OF OPPOSITION** 

Oakland, California, Plaintiffs will and hereby do oppose Defendants' motion to sever the plaintiffs and transfer

the claims to different districts throughout the United States. The grounds are as set forth in the Memorandum

PLEASE TAKE NOTICE that on April 6, 2011 at 9:00 a.m., or as soon thereafter as the matter may be

1

2

3 4

6

5

8

9 10

11

12  $^{13}$ 

14

15

16

1.7

18 19

20

21

22 23

24

25

26

27 2.8

heard, before the Honorable Phyllis J. Hamilton, in Courtroom 3, 3<sup>rd</sup> Floor, Federal Building, 1301 Clay Street,

of Points and Authorities below. 7

> Plaintiffs' opposition is based upon this Notice of Opposition and Opposition, the Memorandum of Points and Authorities included herewith, all matters with respect to which the Court may take judicial notice, all papers and pleadings on file or deemed to be on file herein, and such other documents, arguments and evidentiary matters as may be presented at the hearings.

> > By:

THOMAS V. GIRARDI AMY FISCH SOLOMON AMANDA KENT

Attorneys for Plaintiff